

<b>SCOTT SMITH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,866
<b>STRYKER COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>ZURICH U.S.</b>	)	
Insurance Carrier	)	

The issues before the Board on this appeal are:

1. Are claimant's present back problems and need for medical treatment directly related to an accidental injury that he sustained while working for respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds:

1. Claimant worked for respondent as a journeyman plumber. On June 7, 2000, a sewer machine pulled claimant down a couple of steps while he was trying to pull the machine up a staircase. After the sewer-machine incident, claimant felt soreness in his back and several weeks later developed numbness in the top of his left foot.
2. Claimant did not initially notify respondent of the incident as claimant did not realize that he was injured. Claimant initially believed the June 7, 2000 incident was minor and that his back soreness was of no consequence. But claimant did tell his wife and several of his coworkers that his back was sore. Moreover, claimant only became concerned that he had injured himself after his left foot became numb in either late July or early August 2000.
3. Claimant did not notify respondent that he was having problems with his back or leg until approximately August 17, 2000, when he inquired about workers compensation benefits.
4. After the June 7, 2000 incident, claimant sought treatment with his personal chiropractor, Dr. Pat Goldsworthy, and his family doctor, Dr. Thomas Hamilton, who referred claimant to others for additional tests and treatment. Later, respondent referred claimant to Dr. Dick Geis for treatment.
5. On August 16, 2000, claimant underwent an MRI ordered by Dr. Hamilton, which indicated that claimant had degenerative disc disease with some disc bulging in the lumbar spine at L4-5 and L5-S1, and some mild central stenosis at L4-5. The test also indicated some ligamentous hypertrophy at L4-5 and suggested some bilateral foraminal narrowing at L5-S1 and some possible foraminal narrowing at L4-5 on the left.
6. A procedure note dated August 21, 2000, from Saint Francis Hospital and Medical Center provides the following history:

This is a 27-year-old male referred to the Pain Management Center by Thomas Hamilton, D.O., because of a two week history of low back pain and numbness in his left foot. He states he has a history of having an acute episode of back pain after lifting a heavy piece of machinery and accidentally slipping in his footing that occurred approximately two to four months ago.

He states that pain resolved, and the pain he has now started about two weeks ago. He states his back pain is equally on his left and right side, and it occasionally radiates down to his left posterior thigh to his knee. He denies any weakness in his lower extremities. . . .

7. In a letter to claimant's attorney dated November 6, 2000, Dr. Hamilton wrote:

As you know, Scott Smith lost his footing on some stairs while attempting to pull a sewer-cleaning machine up those stairs. Consequently, he was pulled partially down a basement stairwell by an 80-100 pound machine. It is my opinion that this incident is directly related to his persistent back pain & left foot numbness. . . .

8. Claimant also introduced a statement from Dr. Jonson Huang dated November 6, 2000, which indicated that claimant's "[s]ymptoms and need for treatment did arise due to his injury 6-7-00."

9. By a November 15, 2000 letter to respondent and its insurance carrier's attorney, Dr. Geis stated that he believed claimant's back problem was not related to the June 7, 2000 incident. The doctor's letter provides no explanation or basis for that opinion other than stating that his opinion is partially based on information provided by the respondent and its insurance carrier's attorney.

10. The parties also introduced a medical note from "B.S. Chiropractic" indicating that claimant visited that clinic on August 2, 2000, having symptoms of low back pain from unknown causes.

#### **CONCLUSIONS OF LAW**

1. The Board reverses the Judge and concludes that claimant's present symptoms are related to his employment. Based upon claimant's testimony and the medical opinions from Dr. Hamilton and Dr. Huang, the Board finds that claimant has proven for preliminary hearing purposes that he injured his back on June 7, 2000, while working for respondent. The Board is aware that Dr. Geis stated that he did not believe that claimant's back complaints were related to the June 7, 2000 incident, but the doctor provides no basis for that opinion or any other explanation for claimant's symptoms.

2. Claimant's accidental injury arose out of and in the course of employment with respondent.

3. The Board affirms the Judge's finding that claimant provided timely notice of the accident as just cause existed to extend the period for reporting the accidental injury from 10 days to 75 days.<sup>1</sup>

These facts demonstrate the difficulty workers sometimes experience in determining whether their aches and pains emanate from a work-related injury, from the natural and probable sequelae of a preexisting condition, or from the day-to-day muscle soreness associated with their work. Because he did not realize that he had injured his back on June 7, 2000, claimant had just cause which excused the failure of providing respondent with notice of the accidental injury within the first 10 days following the incident. Therefore, the time for providing notice was extended to 75 days.

**WHEREFORE**, the Board concludes that claimant's present back and leg symptoms are related to his employment and, therefore, the Board reverses the preliminary hearing finding to the contrary.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

c: Derek J. Shafer, Topeka, KS  
Wade A. Dorothy, Lenexa, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> See K.S.A. 44-520.